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SUBJECT: WTO COMMITTEE ON TRADE AND ENVIRONMENT (CTE)
NEGOTIATIONS - SEPTEMBER 15-16, 2005

REFTEL: State 157878

1. Summary: The WTO Committee on Trade and Environment in Special Session (CTESS) meeting on September 15-16, 2005, focused on making progress on environmental goods (EGs), in the run-up to the Hong Kong Ministerial meeting, per Doha sub-paragraph 31(iii). Positions continue to be divided among those that support a list of environmental goods and others that support the consideration of an alternative approach proposed by India, which would identify goods for preferential tariff treatment on an ad hoc basis depending on national environmental projects. Following up on widespread praise for an environmental goods workshop held by the United States the day before the meeting, the United States and several other friends of environmental goods plan to provide similar information on their lists of environmental goods at the October 13-14 CTESS meeting. End Summary.

2. The September meeting of the CTESS was requested by several delegations (including the United States, EC, Canada, New Zealand, Japan, China, Korea, and others) at the July meeting who noted that an intensification of work on environmental goods would be needed in the fall if the CTESS were to achieve a concrete result on EGs for the Hong Kong Ministerial, scheduled for mid-December. While the July CTESS agenda was packed with seven new papers, the September meeting was much more low key and reflective, with no new papers and reduced participation from capitals. The only new document released at the meeting was the updated compilation of environmental goods submissions (a Secretariat document that is not available to the public), which

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includes a matrix of 400-plus products that have been proposed by nine Members in the negotiations thus far.

-Sub-paragraphs 31(i) and 31(ii)-

3. Continuing the trend of focused attention on environmental goods, there was little discussion of the Multilateral Environmental Agreement (MEA)-related mandates charged to the CTESS. On subparagraph 31(i) - the relationship between specific trade obligations set out in MEAs and WTO rules - only the EC and Switzerland made statements. The EC merely noted its continued interest in making progress in this area, but underscored its focused interest in 31(iii). Switzerland responded to questions posed at previous meetings as to how its proffered "principles" related to international, law by offering an intervention purporting (inaccurately) to set out inapplicable law. The main point seemed to be that there is no legal hierarchy between WTO and MEAs, but it went beyond that concept to suggest that "the integrity of each system can only be maintained by paying deference to each other." The Swiss went on to say that there is no need for savings clauses in MEAs, and that WTO rules should "always be interpreted in a manner that they do not constitute a conflict with MEA rules, and vice versa." The Swiss also seemed to suggest that the WTO's "necessity test" should not apply to measures taken in fulfillment of MEA obligations. No delegation reacted to the Swiss intervention but many requested a copy so that they could share with legal experts in capital. On subparagraph 31(ii) dealing with MEA information exchange and observership, there was no discussion at all. The MEA-related discussions are expected to continue at the October meeting, but the focus is likely to continue to be on environmental goods in the run-up to Hong Kong.

-Sub-paragraph 31(iii)-

4. In an effort to advance the discussions on environmental goods, on September 14, the afternoon before the formal meeting, the United States hosted a workshop to further explain the 155 products on its proposed list of environmental goods (contained in TN/TE/W/52) and to answer questions. The workshop attracted excellent participation among developing country delegates (with India being the notable exception), and many delegations complimented the U.S. delegation for its efforts in the formal CTESS meeting, noting that the workshop was informative and calling for similar information exchanges in the context of the October CTESS. The workshop began with an overview of the U.S.

environmental goods list and focused on particular goods through four case studies: 1) solar energy used to provide clean water to rural areas; 2) wind energy used to provide clean water to rural areas; 3) automotive emissions control and related air pollution; and 4) wastewater treatment. Handouts, as well as the overview presentation, are available electronically. Please contact Jennifer Prescott (jprescott@ustr.gov).

15. In the formal meeting, positions continue to be divided among those that support a list of environmental goods (concrete list of products organized by harmonized system code) and those that support the consideration of an alternative approach (notably that proposed by India, which would identify goods for preferential tariff treatment based on their input into national environmental projects). But the proponents of a list approach (e.g. USA, Canada, EC, Japan, Chinese Taipei, Korea, New Zealand and Switzerland) underscored the need to put aside the form of an initiative as well as the potential modality for achieving liberalization, and instead to focus on substance, which in all cases involve concrete products. Most delegations seemed to agree. The US delegation benefited significantly from the responses received from posts that delivered the demarche requested in REFTTEL.

16. The Indian position seemed to harden against the list approach, despite taking care to note that their proposed "alternative approach" is not the "only option." India reportedly made the rounds among developing countries over the summer break and garnered some support for its approach from Indonesia, given that it also provides unilateral duty-free treatment for inputs into large domestic environmental projects. India promised a new paper at this meeting on its "alternative approach" but delivered only the following week, after the meeting. India also committed to provide more information on its proposed approach in October. India also said that it would be useful to discuss: 1) criteria for environmental goods (criteria was also mentioned by Brazil); 2) how non-tariff barriers (NTBs) to EGs might be addressed by the CTESS; 3) how the environmental services piece of the mandate might be addressed by CTESS; and 4) how the products listed by other Members address environmental and developmental problems. India noted that this type of exchange will allow the CTESS to "progress faster," which the delegate from New Zealand seized upon in his intervention.

17. Many delegations (e.g., Chile, Thailand, Ecuador, Singapore, Switzerland and Japan) noted the need to "clean-up" the compilation document, which currently includes over 400 products, about half of which have been proposed by more than one Member. This was an encouraging sign that seems to denote delegations' comfort in engaging in a detailed product discussion in October. But despite attempts by the list proponents to get a detailed discussion of products going at this meeting, there was a clear lack of substantive engagement. Instead, most Members seemed to be looking to October to get more information on the table and to engage in more detailed, technical discussions. Several Members mentioned the U.S. workshop and noted that its case study more contextual format might be a useful way to structure the discussions in October.

18. The Chair, Ambassador Ali (Bangladesh), summarized the meeting by saying that there was clearly a desire for more detailed information exchange among Members and noted that the U.S. workshop seemed to help this. He further underscored that regardless of the approach advocated, Members needed to discuss the environmental and developmental benefits of particular products. He asked delegations that had submitted lists to come prepared in October to further explain the benefits and linkages to environment and development. He further noted that experience with the national project approaches could also be useful in October. Canada suggested that the CTESS structure the October session by focusing on goods that are related to three key environmental and developmental objectives: 1) sanitation; 2) wastewater treatment; and 3) renewable energy. There was not a great deal of comment on Canada's suggestion. The Chair committed to consult with delegations on how to organize the work in October so that concrete progress can be made, noting that an information exchange session might be useful.

19. The United States plans to coordinate closely with the proponents of a list approach in preparing for the October meeting, particularly given that October marks what will likely be the final CTESS before Hong Kong. While the United States and the other proponents continue to advocate for a list of goods to be agreed by Hong Kong, we need to carefully consider other options that can also deliver a concrete result on EGs in time for the Ministerial meeting.

10. The next CTESS meeting is scheduled for the week of October 10, described by the Chair as "environment week." The week will begin with a WTO-sponsored symposium on "Trade and Sustainable Development within the Framework of Paragraph 51 of the Doha Ministerial Declaration," October 10-11 (half day). The CTE Regular Session will take place on October 12. The Chair has called a meeting beginning on the afternoon of October 12 to permit an information exchange on the "considerations that have guided" delegations in proposing certain approaches, such as

identifying specific products. During the same week, the Friends of Environmental Services (USA, EC, Switzerland, New Zealand, Australia and Canada) plan to make detailed presentations at a workshop. The CTESS will take place on October 13-14. Shark